

REQUEST FOR COUNCIL ACTION

SUBJECT: Bingham Creek Culvert Improvements Project

SUMMARY: Approve a contract with Cody Ekker Construction, Inc. for removal and upsizing of Road Culverts along Bingham Creek at 1300 West and 4000 West in an amount not to exceed \$1,139,330.00.

FISCAL IMPACT: The funds for this project are available in the Stormwater Capital Account.

STAFF RECOMMENDATION:

Staff recommends approval of the contract with Cody Ekker Construction, Inc. for removal and upsizing of Road Culverts along Bingham Creek at 1300 West and 4000 West in an amount not to exceed \$1,139,330.00.

MOTION RECOMMENDED:

"I move to adopt Resolution No. 15-01 authorizing the Mayor to execute a contract with Cody Ekker Construction, Inc. for removal and upsizing of Road Culverts along Bingham Creek at 1300 West and 4000 West in an amount not to exceed \$1,139,330.00.

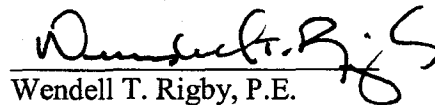
Roll Call vote required

Prepared by:



Tim Heyrend, P.E.
Utilities Engineer

Reviewed by:



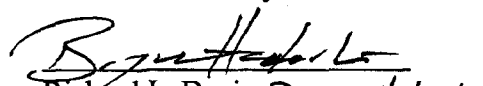
Wendell T. Rigby, P.E.
Director of Public Works

Reviewed as to Legal Sufficiency:



Jeffery Robinson
City Attorney

Recommended by:



Richard L. Davis
Int. City Manager

BACKGROUND DISCUSSION:

This item consists of the removal and upsizing of two culverts along Bingham Creek at 1300 West 8200 South and 4000 West 9250 South. The improvements are necessary to increase the size of the box culverts to allow additional stormwater flow under the road and through the channel, thus lowering the high water level at the culverts, and reducing the risk of flooding in the area.

The portion of work at 1300 West 8200 South includes removal of the existing 8' wide x 5' tall box culvert and replacement with 12' wide 6' tall box culvert. The City will coordinate with Questar Gas so that their high pressure pipeline can be upsized. The stormwater drainage system in the road will be replaced to provide better road drainage to the channel. The channel will be fortified against erosion with gabion baskets and rip rap as required by the County.

A second portion of the work is at 4000 West 9250 South and will replace the existing 48" diameter corrugated metal pipe with a 10' wide x 5' tall box culvert. Rocky Mountain Power will relocate 3-power poles to the east to align with a widened road segment at Bingham Creek. Curb, gutter, and sidewalk will be installed in this road segment. The channel will be fortified against erosion with rip rap as required by the County.

The project is included in the Storm Drainage Master Plan and Strategic Plan.

The bid was advertised by the West Jordan Purchasing Department, and ten companies responded with bids. The lowest bidder was Cody Ekker Construction, Inc. with a total price of \$1,139,330.00; see attached bid results. (Note: Upon review of the Cody Ekker Construction, Inc. bid, an addition error was discovered therefore the agreement amount is \$250.00 less than the bid tabulation amount). The bidding documents were reviewed and evaluated to ensure Cody Ekker Construction, Inc. met the bidding requirements.

It is therefore recommended that the City execute an agreement with Cody Ekker Construction, Inc. for the Bingham Creek Culvert Improvement Project.

Attachments:

- Resolution
- Agreement
- Bid Results
- Recommendation Letter

THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

RESOLUTION NO. 15-01

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CODY EKKER
CONSTRUCTION, INC. FOR THE BINGHAM CREEK CULVERT IMPROVEMENTS PROJECT**

Whereas, the City Council of the City of West Jordan has received bids for the Bingham Creek Culvert Improvement Project with the low, responsible bid being from Cody Ekker Construction, Inc. in the amount of \$1,139,330.00; and

Whereas, the City Council desires to award the contract to Cody Ekker Construction, Inc., which award shall not be binding upon the City of West Jordan unless and until the contract is fully executed by the parties; and

Whereas, the proposed contract between the City of West Jordan and Cody Ekker Construction, Inc. (a copy of which is attached as **Exhibit A**) for the Bingham Creek Culvert Improvement Project in an amount not-to-exceed \$ 1,139,330.00 has been reviewed; and

Whereas, the City Council of the City of West Jordan has determined that the attached contract with Cody Ekker Construction, Inc. for an amount not-to-exceed \$1,139,330.00 is acceptable for the purpose of completing the Bingham Creek Culvert Improvement Project.

NOW, THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST JORDAN, UTAH:

- Section 1. The contract for construction of the Bingham Creek Culvert Improvement Project is hereby awarded to Cody Ekker Construction, Inc. which award shall not be binding upon the City of West Jordan until the contract is fully executed by the parties.
- Section 2. After approval as to legal form by the City Attorney, the Mayor is hereby authorized to execute three original copies of a contract between the City of West Jordan and Cody Ekker Construction, Inc. in an amount not to exceed \$1,139,330.00.
- Section 3. This Resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah this 7th day of January 2015.

CITY OF WEST JORDAN

ATTEST:

By: _____
Kim V. Rolfe
Mayor

MELANIE BRIGGS
City Recorder

RESOLUTION NO. 15-01

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CODY EKKER
CONSTRUCTION, INC. FOR THE BINGHAM CREEK CULVERT IMPROVEMENTS PROJECT

Voting by the City Council

"AYE"

"NAY"

Jeff Haaga

Judy Hansen

Chris McConnehey

Chad Nichols

Ben Southworth

Justin D. Stoker

Mayor Kim V. Rolfe

AGREEMENT

THIS AGREEMENT made this 7th day of January in the year 2015, by and between City of West Jordan, a legal entity organized and existing in Salt Lake County, under and by virtue of the laws of the State of Utah, herein designated as the CITY, and Cody Ekker Construction, Inc. hereinafter designated as the CONTRACTOR.

The CITY and the CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - THE WORK

The CONTRACTOR shall complete the Work as specified or indicated under the Bid Schedule(s) of the CITY's Contract Documents entitled:

Bingham Creek Culvert Improvements Project - Project SD 12-1

The Work is generally includes, but is not limited to the construction of a new 10 foot by 5 foot concrete box culvert for Bingham Creek under 4000 West Street, new 10 foot by 4 foot concrete box culvert upstream extension of the existing Welby Jacob Canal box culvert to allow for the widening of 4000 West Street on the east side, a new 12 foot by 6 foot concrete box culvert for Bingham Creek under 1300 West Street, channel armoring and erosion control with native seeding, storm drain lines, inlet boxes, roadway widening improvements, 6 and 4 foot chain link fencing, surface restoration and landscaping improvements. Also, included are the associated construction surveying, pavement demolition, clearing and grubbing, excavation, potholing and all other work required to complete this project as defined in the project drawings and specifications.

ARTICLE 2 - COMMENCEMENT AND COMPLETION

The Work to be performed under this Contract shall be commenced on the date specified in the Notice to Proceed by the CITY, and the Work shall be fully completed within **150 calendar days** from the date of the Notice to Proceed.

However, Bingham Creek Culvert Replacements on both 4000 West Street and 1300 West Street, along with the Welby Jacob Canal Box Culvert Extension, (all three) must be complete and operational prior to the end of business on Wednesday, April 8, 2015.

The CITY and the CONTRACTOR recognize that time is of the essence of this Agreement and that the CITY will suffer financial loss if the Work is not completed within the time specified in Article 2. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the CITY if the Work is not completed on time. Accordingly, instead of requiring any such proof, the CITY and the CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) the CONTRACTOR shall pay the CITY the sum of **\$500.00** for each calendar day that expires after the time specified above.

ARTICLE 3 - CONTRACT PRICE

The CITY shall pay the CONTRACTOR for the completion of the Work the sum of **\$1,139,330.00** in accordance with the Contract Documents and the CONTRACTOR's Bid and Bid Schedule(s). The parties understand and agree that this represents full compensation for the Work, and CONTRACTOR accepts all risk, whether known or unknown, anticipated or unanticipated, of increased cost of performance, including but not limited to increased materials cost, regardless of amount.

ARTICLE 4 - THE CONTRACT DOCUMENTS

The Contract Documents consist of: Notice Inviting Bids, Instructions to Bidders, Bidder's Licensing Statement, the accepted Bid and Bid Schedule(s), List of Subcontractors, Equipment or Material Proposed, Bidder's General Information, Bid Security or Bid Bond, this Agreement, Worker's Compensation Certificate, Performance Bond, Payment Bond, Notice of Award, Notice to Proceed, Notice of Completion, General

Conditions of the Contract, Supplementary General Conditions of the Contract, Technical Specifications, Standard Specifications, Drawings listed in The Schedule of Drawings in the Supplementary General Conditions or on the Cover Sheet of the Drawings, Addenda numbers 1 to 1, inclusive, and all Change Orders, and Work Directive Changes which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto, all of which are incorporated herein by reference.

ARTICLE 5 - PAYMENT PROCEDURES

The CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions and the Supplementary General Conditions. Applications for Payment will be processed by the Engineer or Architect or the CITY as provided in the General Conditions and shall include the CITY's purchase order number.

ARTICLE 6 - NOTICES

Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the Notice.

ARTICLE 7 - MISCELLANEOUS

Terms used in this Agreement which are defined in Article 1 of the General Conditions and Supplementary General Conditions will have the meanings indicated in said General Conditions and Supplementary General Conditions. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

The CITY and the CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.

REPRESENTATION REGARDING ETHICAL STANDARDS FOR CITY OFFICERS AND EMPLOYEES AND FORMER CITY OFFICERS AND EMPLOYEES: The bidder, offeror, or contractor represents that it has not: (1) provided an illegal gift or payoff to a city officer or former city officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than as exempted in the City's Conflict of Interest ordinance; or (3) knowingly influenced (and hereby promises that it will not knowingly influence) a city officer or employee or former city officer or employee to breach any of the ethical standards set forth in the City's Conflict of Interest ordinance, Chapter 2.4, West Jordan City Code.

IN WITNESS WHEREOF, the CITY and the CONTRACTOR have caused this Agreement to be executed the day and year first above written.

CITY OF WEST JORDAN, UTAH

By:

Mayor

Attest:

City Recorder

Address for giving Notice:

City of West Jordan
Public Works Department
8000 South Redwood Road
West Jordan, Utah 84088

Approved as to Legal Form:

BID / QUOTE TABULATION FORM:

Bid Name Bingham Creek Culvert Improv.

Project # SD 12-01

Bid/Quote Date: Tues. 12-16-14 2:00 PM

Requesting Department: CPG

CONTRACTOR NAME:	Bid Bond	Addendum #1	Revised Schd A.	Revised Schd. B	Total A & B
1 Jordan Valley Construction Inc.	Yes	Yes	\$ 705,911.00	\$ 505,780.00	\$ 1,211,691.00
2 Knife River	Yes	Yes	\$ 733,481.59	\$ 532,390.19	\$ 1,265,871.78
3 Newman Construction, Inc.	Yes	Yes	\$ 1,001,731.43	\$ 631,215.37	\$ 1,632,946.80
4 S & L, Inc.	Yes	Yes	\$ 1,393,320.11	\$ 607,832.86	\$ 2,001,152.97
5 Whitaker Construction Company	Yes	Yes	\$ 816,962.00	\$ 576,530.00	\$ 1,393,492.00
6 Stapp Construction	Yes	Yes	\$ 720,020.00	\$ 496,549.00	\$ 1,216,569.00
7 Noland & Son Construction Company Inc.	Yes	Yes	\$ 873,203.00	\$ 639,063.00	\$ 1,512,266.00
8 Lyndon Jones Construction	Yes	Yes	\$ 979,573.50	\$ 632,125.40	\$ 1,611,698.90
9 Cody Ekker Construction, Inc.	Yes	Yes	\$ 668,780.00	\$ 470,800.00	\$ 1,139,580.00
10 Cracar Construction Company	Yes	Yes	\$ 659,505.78	\$ 490,718.16	\$ 1,150,223.93

December 22, 2014



Civil Engineering
Structural Engineering
Water-Wastewater Design
Transportation Design
Land Surveying
Urban Design
Planning

Tim Heyrend, P.E.
West Jordan City
8000 South Redwood Road
West Jordan City, Utah 84088

RE: Bingham Creek Culvert Replacement Project – Bidder Status Review

Dear Tim,

The City wanted Ensign to review all the documents that were required as part of the Bid from each of the top three Bidders. The blank documents were provided with the Bid, they were to be properly executed by the Bidder and then they were to be submitted with the Bidder's official Bid. Each Bidder was also to provide the Contractors State Division of Professional Licensing (DOPL) information.

Ensign reviewed each of the top three Bidder's documents, we performed a search of the DOPL Licensing information and we also checked the References that were provided for the lowest Bidder which was Cody Ekker Construction Company. The following information is what was discovered:

Bidder # 3 – Jordan Valley Construction, Inc.

- They had submitted all required Documents and they appeared to be executed properly.
- The search of DOPL – indicated that there Contractor's License was Active and that there was no Agency and Disciplinary Action against them.
- I did not check references but I can if needs be.

Bidder # 2 – CRACAR Construction Company

- They had submitted all required Documents and they appeared to be executed properly.
- The search of DOPL – indicated that there Contractor's License was Active and that there was no Agency and Disciplinary Action against them.
- I did not check references but I can if needs be.

Bidder # 1 – Cody Ekker Construction, Inc.

- They had submitted all required Documents and they appeared to be executed properly.
- The search of DOPL – indicated that there Contractor's License was Active and that there was no Agency and Disciplinary Action against them.
- I checked references Phil Lanouette from Salt Lake County, Jenni Oman from Salt Lake County and Scott Olsen from Horrocks Engineers and this is what they indicated concerning Cody Ekker Construction Company:
 - Job Well Done

SALT LAKE CITY
45 West 10000 South, Suite 500
Sandy UT 84070
P 801.255.0529 F 801.255.4449

LAYTON
1485 W Hillfield Road Ste 204
Layton UT 84041
P 801.547.1100 F 801.593.6315

CEDAR CITY
1870 North Main Street
Cedar City UT 84721
P 435.865.1453 F 435.865.7318

TOOELE
169 North Main Street
Tooele UT 84074
P 435.843.3590 F 435.578.0108

- o Communicated Well
- o Responsive
- o Change Orders Reasonable and Warranted
- o Traffic Control Fair/OK
- o Would Reuse Them on Other Work
- o Good Forman
- o Organized
- o Would be Happy to Work With Them Again
- o Good Submittal Process
- o Did Good Work
- o Good Experience
- o Done Early
- o Client Added Additional Work to the Project
- o Capable
- o Would Recommend Them for Other Work
- o Would Use Them Again
- o Good to Work With

The only item I noticed was the projects Ekker provided were all \$1 Million or less. However the References I checked were on the larger jobs they provided one was \$210,000, one was 870,000 and the last one was \$700,000.

So based on what I heard from the References and the fact that the required Documents were provided and appear to have been executed properly I would recommend that they be awarded the Project. However, I have not seen the Abstract of Bids so I don't know if they and any of the other Bidders had made any errors and if they are still Low Bidder.

Let me know if you need any additional information from me.

Again, thank you for the invitation and we look forward to other upcoming opportunities.

Sincerely,



L. Clarke McFarlane, P.E.
Senior Project Manager